



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

A. Christine Svenson, Esq.
Svenson Law Offices
505 N. Lasalle Street, Suite 350
Chicago, IL 60654
christine@svensonlawoffices.com

DEC - 5 2017

RE: MUR 7007
Kyle McCarter for Congress
Committee and Kelly Standfield in
her official capacity as treasurer
Citizens for Kyle McCarter

Dear Ms. Svenson:

On February 12, 2016, the Federal Election Commission (the "Commission") notified your clients, Kyle McCarter for Congress Committee and Kelly Standfield, in her official capacity as treasurer ("Federal Committee"), and Citizens for Kyle McCarter, of a Complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended (the "Act"). A copy of the Complaint was forwarded to your clients at that time. In addition, in the normal course of carrying out its supervisory responsibilities, the Commission became aware of information suggesting that the Federal Committee may have violated the Act, and forwarded to the Committee a copy of RAD Referral ("RR") 16L-20 on November 9, 2016. *See* 52 U.S.C. § 30109(a)(2).

After reviewing the allegations contained in the Complaint and other information available to the Commission, the Commission on November 7, 2017, opened a Matter Under Review in RR 16L-20 and merged it with MUR 7007 and found reason to believe that the Federal Committee violated 52 U.S.C. §§ 30116(f) and 30118(a), provisions of the Act; found no reason to believe that the Federal Committee violated 52 U.S.C. § 30118(a) with respect to contributions that it received from Burgdorf and Associates Wealth Managers, Inc. and Rural King Distributing; and found no reason to believe that the Federal Committee or Citizens for Kyle McCarter violated 52 U.S.C. § 30125(e) and 11 C.F.R. § 110.3(d). Enclosed is the Factual and Legal Analysis that sets forth the basis for the Commission's determinations.

In order to expedite the resolution of this matter, the Commission has authorized the Office of the General Counsel to enter into negotiations directed towards reaching a conciliation agreement in settlement of this matter prior to a finding of probable cause to believe. Pre-probable cause conciliation is not mandated by the Act or the Commission's regulations; but is a voluntary step in the enforcement process that the Commission is offering to the Federal Committee as a way to resolve this matter at an early stage and without the need for briefing the issue of whether or not the Commission should find probable cause to believe that the Federal

Committee violated the law.

Please note that your clients have a legal obligation to preserve all documents, records and materials relating to this matter until such time as you are notified that the Commission has closed its file in this matter. *See* 18 U.S.C. § 1519.

If your clients are interested in engaging in pre-probable cause conciliation, please contact Roy Q. Lockett, the attorney assigned to this matter, at (202) 694-1650 or rluckett@fec.gov, within seven days of receipt of this letter. During conciliation, you may submit any factual or legal materials that you believe are relevant to the resolution of this matter. No action by the Commission or any person and no information derived in connection with any conciliation attempt by the Commission may be made public by the Commission without the written consent of the respondent and the Commission. 52 U.S.C. § 30109(a)(4)(B). The Commission may proceed to the next step in the enforcement process if the Committee is not interested in pre-probable cause conciliation or a mutually acceptable conciliation agreement cannot be reached within 60 days. *See* 52 U.S.C. § 30109(a), 11 C.F.R. Part 111 (Subpart A). Conversely, if your clients are not interested in pre-probable cause conciliation, the Commission may conduct formal discovery in this matter or proceed to the next step in the enforcement process. Please note that once the Commission enters the next step in the enforcement process, it may decline to engage in further settlement discussions until after making a probable cause finding.

Pre-probable cause conciliation, extensions of time, and other enforcement procedures and options are discussed more comprehensively in the Commission's "Guidebook for Complainants and Respondents on the FEC Enforcement Process," which is available on the Commission's website at <http://www.fec.gov/respondent.guide.pdf>.


In the meantime, this matter will remain confidential in accordance with 52 U.S.C. § 30109(a)(4)(B) and 30109(a)(12)(A) unless you notify the Commission in writing that your clients wish the matter to be made public. Please be advised that, although the Commission cannot disclose information regarding an investigation to the public, it may share information on a confidential basis with other law enforcement agencies.¹

¹ The Commission has the statutory authority to refer knowing and willful violations of the Act to the Department of Justice for potential criminal prosecution, 52 U.S.C. § 30109(a)(5)(C), and to report information regarding violations of law not within its jurisdiction to appropriate law enforcement authorities. *Id.* § 30107(a)(9).

A. Christine Svenson, Esq.
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We look forward to your response.

On behalf of the Commission,


Steven T. Walther
Chairman

Enclosures
Factual and Legal Analysis

ENCLOSURE

1 **FEDERAL ELECTION COMMISSION**

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3 **FACTUAL AND LEGAL ANALYSIS**

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6 **RESPONDENTS:** Kyle McCarter for Congress Committee and **MUR: 7007**
7 Kelly Standfield in her official capacity as
8 treasurer
9 Citizens for Kyle McCarter
10

11 **I. INTRODUCTION**

12 This matter was generated based on information ascertained by the Federal Election
13 Commission (the "Commission") in the normal course of carrying out its supervisory
14 responsibilities, and by a Complaint filed by Richard Stubblefield. Kyle McCarter for Congress
15 Committee ("Federal Committee") was referred for possible enforcement action regarding
16 apparent excessive and prohibited contributions that it received during the 2016 election cycle.
17 The Federal Committee was also referred regarding its receipt of general election contributions
18 that were not refunded after McCarter lost the 2016 primary election.

19 The Federal Committee's receipt of the apparent excessive and prohibited contributions
20 is also the subject of the Complaint in MUR 7007. The Complaint also alleges that McCarter's
21 state senate committee, Citizens for Kyle McCarter ("State Committee"), made prohibited in-
22 kind contributions to the Federal Committee by paying for consulting services provided to
23 McCarter's federal campaign.

24 As set forth below, the Commission finds reason to believe that the Federal Committee
25 knowingly accepted excessive and prohibited contributions in violation of 52 U.S.C. §§ 30116(f)
26 and 30118(a), provisions of the Federal Election Campaign Act of 1971, as amended (the "Act").
27 The Commission also finds no reason to believe that the Federal Committee or Citizens for Kyle

McCarter ("State Committee") violated 52 U.S.C. § 30125(e) and 11 C.F.R. § 110.3(d) in connection with the State Committee's alleged payment for consulting services.

II. FACTUAL AND LEGAL ANALYSIS

Kyle McCarter is a State Senator in the Illinois General Assembly who sought the Republican nomination in the 15th Congressional District in Illinois in 2016. McCarter designated the Federal Committee as his principal campaign committee for the congressional election. McCarter lost the primary election on March 15, 2016.

A. Excessive and Corporate Contributions

For the 2016 election cycle, no person was permitted to make contributions to a candidate for federal office or his authorized political committee which in the aggregate exceeded \$2,700 for each election.¹ Candidates and political committees are prohibited from knowingly accepting excessive contributions.² The Commission's regulations provide that when a committee receives an excessive contribution, the committee must, within 60 days of the contribution's receipt, either refund the excessive portion of the contribution or obtain a redesignation or reattribution from the contributor.³

The Act and Commission regulations further prohibit corporations from making contributions to candidate committees and prohibit those committees from knowingly accepting or receiving such contributions.⁴ Contributions that present genuine questions as to whether they are prohibited may be, within ten days of receipt, deposited into a campaign depository or

¹ See 52 U.S.C. § 30116(a)(1)(A); 11 C.F.R. § 110.1(b)(1)..

² See 52 U.S.C. § 30116(f).

³ See 11 C.F.R. § 103.3(b)(3).

⁴ 52 U.S.C § 30118(a); 11 C.F.R. § 114.2(b), (d).

1 returned to the contributor.⁵ If such contribution is deposited and cannot be determined to be
2 legal, the treasurer shall, within thirty days from receipt of the contribution, refund the
3 contribution to the contributor.⁶

4 As set forth in the chart below, the Federal Committee is alleged to have received six
5 2016 primary election contributions totaling \$48,363.69 that were either excessive or prohibited.⁷
6 One of the corporate contributions in the amount of \$500 has apparently not been refunded, and
7 three of the contributions totaling \$44,913.69 were not timely refunded.⁸

⁵ See 11 C.F.R. § 103.3(b)(1).

⁶ *Id.*

⁷ See Referral at 1 (Nov. 4, 2016), Compl. at 2-3 (Feb. 5, 2016). The Complaint based its allegations on the Federal Committee's 2015 Year-End Report along with information from the Illinois Secretary of State's Office regarding the apparent corporate contributors. *Id.* at 2-3, Exs. D-H.

⁸ Referral at 1, Attach. 3.

Contributor	Date	Excessive or Prohibited Amount	Election	Refunded # Days After Receipt	Source
Tri Ford, Inc. (Corporation) (Compl. Exhibit H)	11/05/15	\$ 305.00	Primary	84	Complaint and Referral
James W. Best	11/05/15	\$34,600.00	Primary	84	Complaint and Referral
Darren Bailey ⁹	12/08/15	\$10,008.69	Primary	64	Complaint and Referral ¹⁰
Burgdorf & Associates Wealth Managers, Inc. (Corporation) (Compl. Exhibit E)	12/31/15	\$ 250.00	Primary	28	Complaint
Rural King Distributing (Corporation) (Compl. Exhibit F)	12/31/15	\$ 2,700.00	Primary	28	Complaint
Terra Properties (Corporation)	12/31/15	\$ 500.00	Primary	N/A	Referral
	Total	\$48,363.69			

1
2 The Federal Committee concedes that it received improper contributions but maintains
3 that it did not intend to violate federal election law and asserts that it used a vendor that was
4 responsible for depositing checks, reviewing them for election compliance purposes, and

⁹ The Federal Committee disclosed Darren Bailey's contribution as a contribution from Total Grain Marketing, LLC ("TGM"). The available information indicates that Darren Bailey, a TGM customer, delivered grain to a grain terminal in exchange for grain tickets totalling \$10,008.69. Bailey then took those tickets to a TGM location to exchange the tickets for cash. Instead of receiving the cash, Bailey requested a check made out to the Federal Committee. The TGM location granted this request. On February 25, 2016, after the Committee refunded the contribution to TGM, TGM issued a \$10,008.69 check to Bailey. On February 11, 2016, Bailey separately contributed \$2,700 to the Federal Committee designated for the 2016 primary election.

¹⁰ The Referral likewise lists TGM as the contributor. See Referral at 1, Attach. 3.

1 returning any that were not acceptable under the Act.¹¹ According to the Federal Committee,
2 once the vendor alerted the Committee that "several checks had been deposited mistakenly into
3 the campaign coffers, the monies were immediately returned to the donors."¹² McCarter
4 subsequently responded to the Referral on behalf of the Federal Committee, asserting that it was
5 his understanding that his "campaign has refunded all monies owed, had contributions re-
6 assigned, or reclassified any transactions in error according to your requests" and that "all refund
7 checks have cleared [the Federal Committee's] bank."¹³

8 The available information indicates that the Federal Committee timely refunded within
9 30 days the corporate contributions from Burgdorf and Rural King Distributing, which reflects
10 \$2,950 of the \$48,363.69 amount listed above.¹⁴ The Federal Committee did not timely refund
11 the remaining contributions and has not to date refunded the \$500 from Terra Properties.

12 Based on the foregoing, the Commission finds reason to believe that the Federal
13 Committee violated 52 U.S.C. §§ 30116(f) and 30118(a) by knowingly accepting excessive and
14 prohibited contributions totaling \$45,413.69 (\$48,363.69 - \$2,950.00).

¹¹ Federal Committee Compl. Resp. at 2 (Mar. 29, 2016). Though the Federal Committee asserts that the impermissible contributions were caused by the vendor it hired to review its contributions for compliance with the Act, the Federal Committee is responsible for ensuring the permissibility of its own contributions. *See, e.g.*, MUR 6568 (Heath Shuler for Congress) (finding that Committee failed to report disbursements caused by vendor's error) and MUR 6300 (Republican Party of Virginia) (finding RPV responsible for its vendor's failure to timely forward contributions and RPV's consequential reporting errors). *But see, e.g.*, MUR 5991 (U.S. Term Limits) (dismissed the disclaimer allegations because of confirmed vendor error).

¹² Federal Committee Compl. Resp. at 2.

¹³ Federal Committee Referral Resp. at 1 (Dec. 28, 2016).

¹⁴ *See* 11 C.F.R. § 103.3(b)(1).

B. General Election Contributions

The Commission's regulations permit a candidate's committee to receive contributions for the general election prior to the primary election.¹⁵ If, however, the candidate does not become a candidate in the general election, the committee must: (1) refund the contributions designated for the general election; (2) redesignate such contributions in accordance with 11 C.F.R. §§ 110.1(b)(5) or 110.2(b)(5); or (3) reattribute such contributions in accordance with 11 C.F.R. § 110.1(k)(3).¹⁶ The committee must do so within 60 days of the date that the committee has actual notice of the need to redesignate, reattribute, or refund the contributions, such as the date the candidate loses the primary or withdraws from the campaign.¹⁷

Redesignation of general election contributions may only occur to the extent that the amount redesignated does not exceed the contributor's contribution limit for the primary and the amounts redesignated do not exceed the net debts outstanding from the primary.¹⁸ If a committee deposits contributions that exceed its net debts outstanding, it must, within 60 days of accepting the excessive contributions, refund, redesignate, or reattribute the excessive

¹⁵ See 11 C.F.R. § 102.9(e)(1). The committee must use an acceptable accounting method to distinguish between primary and general election contributions. *Id.* The committee's records must demonstrate that prior to the primary election, the committee's recorded cash on hand was at all times equal to or in excess of the sum of general election contributions received less the sum of general election disbursements made. See 11 C.F.R. § 102.9(e)(2).

¹⁶ See 11 C.F.R. §§ 102.9(e)(3), 110.1(b)(3)(i), 110.2(b)(3)(i). See also Advisory Op. 1992-15 (Russo for Congress Committee) at 2 ("Nonetheless, the Commission concludes that for losing primary candidates, like Mr. Russo, who receive contributions before the primary election that are designated for the general election, redesignations within 60 days of the primary election date would be permissible."); Advisory Op. 2007-03 (Obama for America) at 3 ("If a candidate fails to qualify for the general election, any contributions designated for the general election that have been received from contributors who have already reached their contribution limit for the primary election would exceed FECA's contribution limits.").

¹⁷ See Advisory Op. 2008-04 (Dodd); Advisory Op. 1992-15 (Russo).

¹⁸ See 11 C.F.R. §§ 110.1(b)(5)(iii) and (b)(3)(i), 110.2(b)(5)(iii) and (b)(3)(i); see also AO 1992-15 (Russo) at 2. A committee's net debts outstanding are calculated, in relevant part, based on the total amount of debts and obligations incurred for an election, less the total cash on hand available, and any amounts owed to the committee. 11 C.F.R. § 110.1(b)(3)(ii).

contributions.¹⁹ Likewise, reattribution of a general election contribution to another contributor may only occur to the extent that such attribution does not exceed that other contributor's contribution limits.²⁰

RAD referred the Federal Committee's acceptance of three general election contributions totaling \$5,900 that were designated for the 2016 general election, but were not redesignated, reattributed, or refunded within 60 days after the candidate's March 15, 2016, primary election loss.²¹ The Federal Committee's disclosure reports do not reflect that these particular contributions have been refunded to date. The chart below lists the contributions at issue:

Contributor	Date	Amount	Election	Refunded # Days After Receipt
Robert Mercer	2/22/16	\$2,700	General	N/A
Seven Oaks Apartments (Partnership)	3/08/16	\$2,500	General	N/A
William Hoteling	3/09/16	\$ 700	General	N/A
	Total	\$5,900		

Accordingly, the Commission finds reason to believe that the Federal Committee further violated 52 U.S.C. § 30116(f) by knowingly accepting excessive contributions.

C. State Committee Payments for Consulting Services

The Complaint also alleges that the State Committee used impermissible nonfederal funds to pay for the services of a campaign consultant for the Federal Committee, which the

¹⁹ See 11 C.F.R. §§ 110.1(b)(3)(i), 110.2(b)(3)(i); see also 11 C.F.R. §§ 110.1(b)(5) and 110.1(k)(3).

²⁰ See 11 C.F.R. § 110.1(k)(3)(ii)(B)(1); see also AO 2007-03 (Obama) at 3.

²¹ *Id.* at 2. See 11 C.F.R. § 102.9(e)(3).

1 latter failed to report.²² According to the Complaint, in the months before McCarter announced
2 that he was running for federal office — McCarter filed his Statement of Candidacy on
3 October 15, 2015 — McCarter’s State Committee spent over \$33,000 on a campaign consultant,
4 Isaiah Consulting Group (“Isaiah”), even though McCarter’s term in the State Senate does not
5 end until 2019, and he had reportedly announced that he was not seeking re-election to that
6 office.²³ The Complaint further states that Elizabeth Van Holt, the owner of Isaiah, attended
7 McCarter’s October 7, 2015, federal candidacy announcement, and McCarter reportedly
8 informed the press that she had been hired to work on his congressional campaign.²⁴

9 The Federal Committee asserts that the State Committee previously paid Isaiah for state-
10 level consulting, specifically, contract work performed by Van Holt for the State Committee
11 starting in January 2015 and concluding on August 31, 2015.²⁵ It further asserts that Van Holt’s
12 duties for the State Committee included “organizing events, donor contact and overall assistance
13 with campaign management.”²⁶ The Federal Committee provided a photocopy of an undated
14 contract signed by Isaiah and McCarter on behalf of the State Committee, which provides for
15 eight monthly payments of \$4,125 (totaling \$33,000). During this eight-month period, referred
16 in the contract as the “Advisory Period,” Isaiah agreed to “provide strategic advice, guidance,
17 and counseling” regarding the State Committee’s business and operations.²⁷ Additionally, Isaiah

²² Compl. at 1.

²³ *Id.*

²⁴ *Id.* at 2.

²⁵ Federal Committee Compl. Resp. at 1.

²⁶ *Id.*

²⁷ *Id.*, Ex. A (Isaiah Contract (“Strategic Advisor Agreement”)).

1 agreed to assist the State Committee on “branding, strategic management and fundraising”
2 issues.²⁸

3 In support of the Federal Committee’s response, Van Holt declares in an Affidavit that
4 she discussed with McCarter in October 2015 the possibility of working for the Federal
5 Committee.²⁹ She further avers that while the Federal Committee “could not afford [her]
6 services,” the parties agreed verbally that she “would perform part time volunteer services for the
7 [F]ederal Committee,” which ultimately consisted of “some field work and assistance with
8 fundraising.”³⁰

9 The State Committee asserts that the Complaint’s sole “evidence” that the State
10 Committee provided an in-kind contribution to the Federal Committee is Van Holt’s “mere
11 presence at a campaign announcement,” which alone is insufficient to constitute a violation of
12 the Act.³¹

13 Under the Act, a federal candidate, the agent of a candidate, or an entity directly or
14 indirectly established, financed, maintained, or controlled by, or acting on behalf of a candidate,
15 shall not “solicit, receive, direct, transfer, or spend funds in connection with an election for
16 Federal office” unless the funds are subject to the “limitations, prohibitions, and reporting

²⁸ *Id.*

²⁹ Federal Committee Compl. Resp., Van Holt Aff. ¶ 8.

³⁰ *Id.* ¶¶ 8-10.

³¹ State Committee Resp. at 1-2 (June 3, 2016).

requirements.”³² Moreover, Commission regulations prohibit the transfer of funds or assets from a candidate’s nonfederal campaign committee to his or her federal campaign committee.³³ Thus, if the State Committee disbursed \$33,000 to pay for consultant fees for services provided to the Federal Committee, those payments constitute improper transfers of funds or assets to the Federal Committee.³⁴

The Complaint argues that the amount of the State Committee’s payment to Van Holt’s consulting company and her appearance at McCarter’s candidacy announcement demonstrates a scheme to use McCarter’s state campaign funds to benefit his federal candidacy. But these circumstances alone are insufficient to draw an inference that such a scheme occurred. The Federal and State Committees and Van Holt each assert that the payments by the State Committee to Isaiah were for services provided to the State Committee at a time when McCarter was a State Senator and had ongoing official duties. Indeed, Isaiah concluded performing these services before McCarter announced his candidacy, and the Complaint does not allege, and the available record does not suggest, that these services reflected testing the waters activity to gauge the viability of his potential run. Further, Van Holt and the Federal and State Committees each

³² 52 U.S.C. § 30125(e)(1); 11 C.F.R. §§ 300.60, 300.61. Illinois law permits candidates to accept contributions from corporations subject to limitations. See 10 ILCS 5/9-8.5(a)-(d) (during an election cycle, a candidate political committee may not accept contributions with an aggregate value over \$10,000 from any corporation).

³³ 11 C.F.R. § 110.3(d) (transfers of funds or assets from a candidate’s campaign committee or account for a nonfederal election to his or her principal campaign committee or other authorized committee for a federal election are prohibited); Transfers of Funds from State to Federal Campaigns, 58 Fed. Reg. 3474 (Jan. 8, 1993) (Explanation and Justification).

³⁴ See MUR 6267 (Paton For Senate) (Paton’s federal committee violated 11 C.F.R. § 110.3(d) by receiving prohibited transfer of funds when Paton’s state senate committee paid for polling and a survey benefiting his federal campaign); and MUR 5646 (Cohen for New Hampshire) (Cohen’s federal committee received prohibited transfer of funds when Cohen’s state committee paid for start-up expenses related to his U.S. Senate campaign).

1 deny that Isaiah performed work for the Federal Committee.³⁵ Based on these factors, it does not
2 appear that Isaiah's services to the State Committee from January through August 2015
3 constituted an in-kind contribution to McCarter's Federal Committee. Accordingly, the
4 Commission finds no reason to believe the Federal and State Committees violated 52 U.S.C.
5 § 30125(e) or 11 C.F.R. § 110.3(d).

³⁵ Shortly after the Complaint was filed, on February 8, 2016, the Federal Committee paid \$2,479 to Isaiah for "fun[d]raising consulting." See Federal Committee 2016 12-Day Pre-Primary Report (Mar. 3, 2016) at 75, *available at* <http://docquery.fec.gov/pdf/039/201603039009641039/201603039009641039.pdf>. The Federal Committee disclosed an additional disbursement to Isaiah Consulting Group for expenses on October 4, 2016. See Federal Committee 2016 Year-End Report (Jan. 31, 2017) at 8, *available at* [http://docquery.fec.gov/pdf/009/201701319042197009.pdf](http://docquery.fec.gov/pdf/009/201701319042197009/201701319042197009.pdf).

But Van Holt declares in her Affidavit that this description is incorrect, as this disbursement should have reflected a reimbursement solely to Van Holt for expenses relating to her volunteer services, which included hotel, skype, food, and gas charges. Federal Committee Compl. Resp. at 1-2, Van Holt Aff. ¶ 12. The Federal Committee further states that it intended to file an amended report to properly report this activity. *Id.* at 2. However, to date, the Federal Committee has not amended its report to reflect the appropriate disbursement.